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HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.177 OF 2006

Applicant Accused		Krishna Mudliyar.
	Vs	
Respondent Complainant		Mahaveer Vastra Bhandar, Khairagarh.

~~27th~~ 26th AUGUST, 2007

Sd/-
DHIRENDRA MISHRA
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.177 OF 2006

Applicant Accused		Krishna Mudliyar, S/o Late Shri Paplubabu Mudliyar, aged 56 years, R/o Stationpara, under Over Bridge, Rajnandgaon, District Rajnandgaon.
	Vs	
Respondent Complainant		Mahaveer Vastra Bhandar, Proprietor, Rajkumar Chhajed, aged about 35 years, R/o Bakshi Marg, Khairagarh, Tahsil Khairagarh, District Rajnandgaon.

Present:
Mrs. Hamida Siddique, Advocate for the applicant.

O R D E R

(Passed on 27.8.2007)

Per Dhirendra Mishra, J:

1. The applicant by the instant petition under Section 482 of Code of Criminal Procedure, 1973 (for brevity 'the Code') has prayed for quashing of the order dated 11.10.2006 of Annexure A-1.

2. Briefly stated facts are that a complaint was filed by the respondent/complainant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') alleging that the applicant/accused issued a cheque for a sum of Rs.50,000/- on 2.3.2003, which was dis-honoured on the ground of insufficient funds in the account of the applicant/accused. The respondent/complainant issued a notice dated 23.5.2003 to the applicant/accused informing that the cheque issued by him has returned unpaid by his banker on the ground of insufficient funds in his account. Notice was replied by the applicant/accused vide his reply dated 4.6.2003 in which the applicant has made a request to send the photocopy of the

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cheque. Thereafter, a notice was again sent to the applicant/accused on 12.6.2003 along with the photocopy of cheque, whereupon, the applicant/accused made oral request for some time. On the request of the applicant/accused, the cheque was again deposited for encashment, however, it was again returned unpaid by the bankers of the applicant/accused with an endorsement that the sufficient amount is not available in the account. The intimation of dishonour of cheque was given to the applicant/accused on 18.7.2003 and the complainant again sent a registered notice dated 28.7.2003. However, the applicant failed to make payment against the cheque and in these circumstances the complaint was filed on 16.8.2003.

3. After receipt of the summons, the applicant appeared before the trial court and filed an application dated 6.1.2005 under Section 203 of the Code and prayed for dismissal of the complaint on the ground that the complaint was barred by limitation. However, the application was rejected by the trial court with an observation that after service of summons the accused appeared before the Court in the month of January, 2004 and after hearing the arguments of learned counsel for the parties, the particulars of offence were explained on 3.3.2005, the applicant has preferred the application under Section 203 belatedly and since the criminal courts do not have the power of review of its own order, the application was rejected. Revision preferred by the applicant herein was also rejected by the learned Additional Sessions Judge vide order of Annexure A-1.

4. Learned counsel for the applicant submits that the cause of action was available to the complainant when the applicant did not make the payment within 15 days of the receipt of

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the notice of demand dated 23.5.2003. In any case, as the notice was replied by the applicant on 4.6.2003, therefore, the cause of action was available to the complainant up to 19.6.2003. However, the complainant failed to file the complaint within the period of fifteen days of the date on which cause of action arose, as provided under section 138 (c) of the Act.

5. I have heard learned counsel for the parties.

6. From perusal of the averments in the complaint of Annexure A-2 it appears that the cause of action arose to the complainant within 15 days of the receipt of the demand notice dated 23.5.2003 by the accused and since the accused had replied the above notice on 4.6.2003, therefore in any case, cause of action arose to him latest by 19.6.2003. However, from the averments available in the complaint it is evident that the complainant did not file the complaint within the stipulated period as the accused requested him to send the photocopy of the cheque and thereafter requested him to present the cheque again for encashment, whereupon, he deposited the cheque with his banker as per instruction of the accused and only after the cheque was dishonoured for the second time, the complainant has filed the instant complaint mentioning all the above facts in the complaint.

7. Proviso to Section 142 (b) of the Act gives discretion to the Court that cognizance of the complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

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8. The Hon'ble Apex Court in the matter of **D.Vinod Shivappa Vs. Nanda Belliappa**[1] in Para 12 & 13 has held thus;-

> "12. It is well settled that in interpreting a statute the court must adopt that construction which suppresses the mischief and advances the remedy. This is a rule laid down in *Heydon's* case also known as the rule of purposive construction or mischief rules.
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> 13. Section 138 of the Act was enacted to punish those unscrupulous persons who purported to discharge their liability by issuing cheques without really intending to do so, which was demonstrated by the fact that there was no sufficient balance in the account to discharge the liability. Apart from civil liability, a criminal liability was imposed on such unscrupulous drawers of cheques. The prosecution, however, was made subject to certain conditions. With a view to avoid unnecessary prosecution of an honest drawer of a cheque, or to give an opportunity to the drawer to make amends, the proviso to Section 138 provides that after dishonour of the cheque, the payee or the holder of the cheque in due course must give a written notice to the drawer to make good the payment. The drawer is given 15 days' time from date of receipt of notice to make the payment, and only if he fails to make the payment he may be prosecuted. The object which the proviso seeks to achieve is quite obvious. It may be that on account of mistake of the bank, a cheque may be returned despite the fact that there is sufficient balance in the account from which the amount is to be paid. In such a case if the drawer of the cheque is prosecuted without notice, it would result in great injustice and hardship to an honest drawer. One can also conceive of cases where a well intentioned drawer may have inadvertently missed to make necessary arrangements for

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reasons beyond his control, even though he genuinely intended to honour the cheque drawn by him. The law treats such lapses induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. It is for this reason that clause [c] of proviso to Section 138 provides that the payment within 15 days of the receipt of the said notice. To repeat, the dishonoured for the fault of others, or who may have genuinely wanted to fulfill their promise but on account of inadvertence or negligence failed to make necessary arrangements for the payment of the cheque. The proviso is not meant to protect unscrupulous drawer who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons."

9. Thus, from the averments available in the complaint it is manifestly clear that the complainant has given satisfactory explanation for not making the complaint within the prescribed period, as provided under Section 142 (b) of the Act, and therefore, the cognizance of the complaint could be taken by the Magistrate after the prescribed period.

10. In the result, the petition of the applicant has no merit, the same is liable to be dismissed and it is hereby dismissed at the admission stage itself.

Sd/-
DHIRENDRA MISHRA
Judge

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